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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,403	11/03/2003	Guillaume Cassin	231062US0	2866
22850	7590	06/11/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
CRUZ, KATHIRIN ANN				
ART UNIT		PAPER NUMBER		
1617				
NOTIFICATION DATE		DELIVERY MODE		
06/11/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/698,403

**Applicant(s)**

CASSIN, GUILLAUME

**Examiner**

KATHRIEN CRUZ

**Art Unit**

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### Claims 1-20 are pending.

Applicants response dated March 12, 2009 has been received and entered in the application.

#### **Priority**

This application claims benefit of provisional application 60/428741 (dated 11/25/2002).

#### **Action Summary**

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caisey et al. (US Patent No. 5587170), in view of Elliott et al. (US Patent No. 4954532) and further in view of Alexander et al. (US Patent No. 2892797) is maintained.

#### ***Response to Arguments***

Applicant argues that secondary references do not compensate for Caise's fatal deficiencies. This argument has been fully considered but has not been found persuasive. Caisey et al. disclose that the colloidal suspensions comprise metal oxide particles such as Al<sub>2</sub>O<sub>3</sub>, TiO<sub>2</sub>, SiO<sub>2</sub> (column 2, lines 1-60). And Elliott teaches a degreasing or moisturizing composition containing silianised silica gel, a humectant, and a carrier; and that the composition is to be used to treat seborrheic conditions without causing dry skin. Although Elliott composition does not require an silica/alumina

composities, it is possible to use silica/aluminia instead of silica only coating. It would be obvious to one of ordinary skills to substitute silica/aluminia for silica for the increased stability versus other silca sols. Therefore, since both references teach a composition and method of treatment comprising of silica sol colloidal dispersion to formulate a composition for use in the treatment of skin as a mattifying agent applied to an individual that has greasy skin, the claim limitation as set forth has been met.

Applicant argues that Alexander patent was issued in 1956 and no one has ever used the composition disclosed by Alexander. Applicants are reminded that the age of the patent and whether or not the composition has been used is not relevant. The composition has indeed been granted a patent and therefore is deemed appropriate as prior art.

Applicant is further reminded that arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

For the ease of the applicant, the previous Office Action dated November 12, 2008 is reproduced below.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-20 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Caisey et al. (US Patent No. 5587170), in view of Elliott et al. (US Patent No. 4954532) and further in view of Alexander et al. (US Patent No. 2892797).

Caisey et al. teach, in the abstract, use of a colloidal suspension based on inorganic fillers, which can be prepared by the sol-gel process as a cosmetic composition for treating the skin, hair and/or nails. In col. 1 lines 5-40, Caisey et al. disclose that skin treated with the colloidal suspension is more matt and thereby visually disguising wrinkles. In col. 2 lines 1-60, Caisey et al. disclose that the colloidal suspensions comprise metal oxide particles such as  $Al_2O_3$ ,  $TiO_2$ ,  $SiO_2$  etc...The metal oxide particles form the inorganic filler and the inorganic filler has a particle size of between 1nm and 300nm and preferably 5nm to 100nm. In col. 3 lines 10-35, Caisey et al. discloses that the colloidal suspensions can have the inorganic fillers in suspension

in concentrations between 0.001-25% by weight and that the pH of the compositions is generally between 5 and 10. The compositions can also contain silicones, non-ionic polymers, polyvinyl alcohol, polyvinylpyrrolidone, polyvinylbutyral and/or glycerols.

Caisey et al. does not disclose a process of treating greasy skin, the inorganic filler as being a silica/alumina composite filler, or a thickening hydrocolloid such as the polysaccharide biopolymers.

Elliott et al. teaches, in the abstract, a degreasing or moisturizing composition containing silanised silica gel, a humectant, and a carrier; and that the composition is to be used to treat sebhorreic conditions without causing dry skin. In col. 2 lines 10-62, Elliott et al. teach that the silanised silica gel has a mean particle size of 0.1-20X10-6m. The humectant used includes sorbitol, propylene glycol, glycerine and Lubragel. The composition comprises 0.1-5% by weight silanised adsorbent. The composition further comprises suspending agents such as polyacrylic acid, carbomers, hydroxyalkyl cellulose, Xanthan gum and magnesium aluminum silicate.

Alexander et al. teaches, in col. 1 lines 15-50, silica sols modified by treatment with a solution of a metalate so that the silica particles are coated with no more than a molecular layer of combined metal which forms an insoluble silicate at a pH between 5 and 12. The silica sols thus created have increased stability. The silica sols contain colloidal, amorphous silica particles which are in the range from 3-150 millimicrons. In col. 2 lines 61-70, Alexander discloses that the preferred metal for coating the silica is aluminum. The examiner respectfully notes that the alumina/silica compound of the Alexander patent corresponds to the LUDOX™ AM product from Grace.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a silica sol colloidal dispersion to formulate a composition for use in the treatment of skin as a mattifying agent applied to an individual that has greasy skin as Caisey et al. and Elliott et al. disclose compositions directed toward those uses respectively. It would have obvious to one of ordinary skill that the silica sol could be substituted with any suitable silica sol such as the alumina/silica sol disclosed by Alexander et al. One would have been motivated to use Alexander et al.'s alumina/silica sol due to its increased stability compared to other silica sols.

For these reasons, the claimed subject matter is deemed to fail to be patentably distinguishable over the state of the art as represented by the cited reference. The claims are therefore, properly rejected under 35 U.S.C. 103. In light of the forgoing discussion, the Examiner concludes that the subject matter defined by the instant claims would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention.

Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

#### **Conclusion**

Claims 1-20 are rejected.

No claims are allowed.

#### **Communication**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHRIEN CRUZ whose telephone number is (571)270-5238. The examiner can normally be reached on Mon - Thurs 7:00am - 5:00pm with every Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHRIEN CRUZ/  
Examiner, Art Unit 1617

/San-ming Hui/

Primary Examiner, Art Unit 1617